

**THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
CIVIL CASE NO. 1:12-cv-36-MR-DLH**

UNITED STATES OF AMERICA,)

Plaintiff,)

vs.)

ORDER

FRANCES CARLSON, REIDAR)

G. CARLSON, and REIDAR'S)

RETREAT, LLC,)

Defendants.)

THIS MATTER is before the Court sua sponte following the Eleventh Circuit's vacatur of the judgment entered by the U.S. District Court for the Middle District of Florida against Defendant Frances Carlson.

The procedural history giving rise to this action arose in the State of Florida. On September 7, 2009, the IRS assessed penalties against Defendant Frances Carlson pursuant to IRC § 6701 in the amount of \$148,000. Ms. Carlson filed suit on April 19, 2010, in the U.S. District Court for the Middle District of Florida, Docket Number 8:10-cv-00900-SCB-TGW, to contest her alleged liability for the § 6701 penalties that had been assessed against her. The IRS counterclaimed seeking a judgment for the § 6701 penalties which were based upon 40 tax returns Ms. Carlson helped

to prepare for various taxpayers. Prior to trial, the IRS conceded the penalties with regard to 13 of the returns and the parties proceeded to trial. On February 2, 2012, after an eight-day trial, a jury returned a verdict finding that Ms. Carlson had fraudulently prepared the 27 remaining tax returns. The Florida Middle District Court entered judgment in favor of the IRS on the penalties flowing from the 27 returns alleged in the IRS' counterclaim and Ms. Carlson appealed. While Ms. Carlson's appeal was pending, the IRS filed suit in this Court seeking to enforce the Florida judgment against real property situated in this District and allegedly owned or managed by Ms. Carlson, her husband Reidar Carlson, and/or the entity Reidar's Retreat, LLC.

On June 13, 2014, the Eleventh Circuit issued a decision reversing in part the Florida district court's judgment, vacating the remainder of the judgment, and remanding the matter back to that court for further consideration. Frances Carlson v. United States, No. 12-13736, slip op. at 23 (11th Cir. June 13, 2014). The appellate court ruled that insufficient evidence exists to support the jury's verdict on the penalties related to 12 of the 27 returns and directed the district court to enter judgment in favor of Ms. Carlson on these penalties. Id. Additionally, the panel vacated the

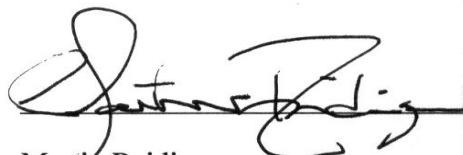
remainder of the jury's verdict holding that the burden of proof in an IRC § 6701 matter is by clear and convincing evidence and the district court erroneously instructed the jury that the IRS' burden of proof was by the preponderance standard. Id. The case has been remanded by the panel to the Middle District of Florida with instructions consistent with its opinion. Id.

Given the Eleventh Circuit's decision and vacature of the judgment that underlies the bringing of this action, the Court directs that the parties provide their respective memoranda of law as to whether such vacature necessitates the dismissal of this action, whether the matter should be stayed, or whether other relief should be granted.

IT IS, THEREFORE, ORDERED that the parties shall file briefs on the issue of the disposition of this matter as identified herein on or before **June 27, 2014**. The briefs shall be double spaced and in 14-point font, and shall not exceed fifteen (15) pages.

IT IS SO ORDERED.

Signed: June 16, 2014


Martin Reidinger
United States District Judge

